BAIL SLIP

The Petitioners 1 and 2 herein namely (1)Mariappan (2) Govindaraj @ Venkatachalam (Accused) was directed to be released on bail as per order of this Court dated 12.2.98 and made in Crl.M.P. No.1085/98 in CA 113/98 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2004

CORAM

THE HONOURABLE MRS. JUSTICE R.BANUMATHI

CRL.APPEAL No.113 of 1998

1. Mariappan ... Appellants /
2. Govindaraj @ Venkatachalam Accused 1 and 2

Vs.

State represented
by Inspector of Police, ... Respondent /
Jalakandapuram Police Station, Complainant
(Crime No.129/95)

This Criminal Appeal arises out of the Judgment dated 20.01.1998 made in S.C.No.261 of 1996 on the file of II Additional Sessions Judge, Salem.

For Appellants : Mr. K.V.Sridharan

For Respondent : Mr. V.Jayaprakashnarayanan,
Government Adovcate,
(Crl.Side)

J U D G M E N T

Appellants are accused No.1 to 2 in S.C.No.261 of 1996 on the file of II Additional Sessions Judge, Salem. By the Judgment dated: 20.01.1998, the learned Sessions Judge has convicted the Appellants / Accused 1 and 2 under S.325 r/w 34 I.P.C. and sentenced them to undergo Rigorous Imprisonment for a period of Three Years each and to pay a fine of R.500/- each; in default to undergo Simple Imprisonment for three months. A.3 had been acquitted by the trial Court. The Appellants / A.1 and A.2 were also acquitted of the Charges framed against them under S.302 r/w 34 I.P.C.

2. Case of prosecution could briefly be stated thus:-
Deceased Arumugham is the younger brother of A.1 – Mariappan. A.2 – Govindaraj alias Venkatachalam is the son of A.1; A.3 -

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Thoppili is the wife of A.2. Between the brothers, there has been long standing enmity on account of the pathway dispute. On 06.08.1995 – 7.00 p.m., A.1 was sowing Cotton seeds in his field. At that time, deceased Arumugham questioned him stating that he was doing the sowing by cutting of *பொழி / பொது வரப்பு*. causing prejudice to him to the enjoyment of Common Pathway. At that time, A.1 and A.2 beat Arumugham on his Cheek and pushed him down. A.3 is alleged to have sat on Arumugham stuffing mud into his mouth. Then A.1 and A.2 beat him all over the body of Arumugham. A.2 squeezed the testicles of Arumugham. On seeing her husband being attacked, P.W.1 – Kannupillai raised alarm. P.W.2 – Govindaraj came there and witnessed the occurrence. When P.W.2 came there, he found A.1 sitting on the deceased and putting mud in the mouth. When P.W.2 interfered, all the accused had run away.

3. P.W.3 – Palanichamy – Son of Arumugham had learnt about the occurrence. He had taken his father to P.W.8 – Dr.Ilangovan. P.W.8 gave First Aid treatment to injured Arumugham and referred him to Government Hospital, Jalakandapuram.

4. In Government Hospital, Jalakandapuram, P.W.9 – Dr.Krishnaraj has examined Arumugham on 07.08.1995 – 3.15 p.m. He has noted:– Abrasion on the middle and lateral aspect of right thigh; Pain in the Abdomen; Scrotum found to be normal. P.W.9 issued Ex.P.5 – Accident Register. For better management and treatment, Arumugham was referred to Government Hospital, Salem. About the admission of Arumugham in the Hospital, P.W.9 sent intimation to the Jalakandapuram Police Station. On 07.08.1995 – 6.30 p.m., P.W.11 – Dr.Govindarajan, attached to Government Mohan Kumaramangalam Hospital has examined Arumugham and admitted him in the Hospital.

5. On receipt of intimation from the Hospital, P.W.14 – Sub Inspector of Police went to the Hospital and recorded Ex.P.1 – Statement of P.W.1 – Kannupillai. On the basis of Ex.P.1 – Statement, P.W.14 registered the case in Jalakandapuram Police Station Crime No.129 of 1995 under Ss.341, 323 and 325 I.P.C. under Ex.P.10 – First Information Report.

6. P.W.17 – Dr.Natesan, attached to Government Hospital has examined Arumugham and noted that Arumugham has developed Peritonitis. P.W.17 has treated him. Arumugham succumbed to injuries on 08.08.1995 – 6.45 p.m. P.W.10 – Dr.Singaravelu sent Ex.P.6 – Death Intimation to Jalakandapuram Police Station.

7. On the basis of Ex.P.6 – Death Intimation, P.W.15 – Sub Inspector of Police altered the First Information Report into S.302 I.P.C. under Ex.P.11 – Express Report. P.W.16 – Inspector of Police had taken up the investigation. Scene of occurrence – field of one Govindan was inspected in the presence of P.W.4 – Venkatachalam and one Palaniyandi. Ex.P.2 – Observation Mahazar and Ex.P.12 – Rough Plan were prepared on the scene of occurrence. P.W.16 – I.O. examined the witnesses in the presence of Panchayatdars and held inquest on the body of deceased Arumugham. Ex.P.13 is the Inquest Report. After inquest, the body was sent to Autopsy.

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8. Pursuant to the Requisition from the Inspector of Police, P.W.12 – Dr.Vallinayagam has conducted Autopsy on the body of deceased Arumugham. He has noted the following injuries:–
(i) Contusion in front of Abdomen on the lower aspect;

(ii) Sutured Wound on the right lumbar region and left lumbar region;

(iii) Peritoneum Shinyness lost. Muddy, Peritoneal cavity contains 800 cc foul smelling dirty brown fluid. A perforation present on the ileal portion on the small intestine, coils of the small intestine were adherent to each other.
Opining that the deceased died of multiple injuries, P.W.12 issued Ex.P.8 – Post–mortem Certificate.

9. On 10.08.1995 – 6.00 a.m., accused were arrested in Soorappalli Bus Stop and were remanded to custody. On completion of investigation, Appellants and A.3 – Wife of A.2 were charge sheeted for the offence under Ss. 302 I.P.C and 302 r/w 34 I.P.C.

10. In the trial Court, to substantiate the charges against the accused, P.Ws.1 to 17 were examined. Ex.P.1 to 14 were marked. The accused were questioned about the incriminating evidence and circumstances under S.313 Crl.P.C. Denying all of them, A.1 to A.3 have stated that a false case has been foisted against them.

11. In consideration of the evidence, the learned Sessions Judge found that the evidence of P.W.1 is unsupported by the evidence of P.W.2. It was further held that the death was due to Peritonitis and as to who is responsible for causing the injuries is not proved by the prosecution beyond reasonable doubt and on those grounds, the trial Court acquitted A.1 and A.2 under S.302 r/w 34 I.P.C.; A.3 under S.302 r/w 109 I.P.C. Finding that the accused had no intention or knowledge to commit the murder of Arumugham, A.1 and A.2 were convicted under S.325 r/w 34 I.P.C.

12. Aggrieved over the same, the Appellants / A.1 and A.2 have preferred this appeal. Attacking the reasonings and findings of conviction, learned counsel for the Appellants / A.1 and A.2 has mainly relied upon the inconsistencies in the version of P.Ws.1 and 2 on the overt act of the accused. It is contended that P.Ws.1 and 2 have not corroborated each other as to the overt act of stuffing mud into the mouth of the deceased. The main defence urged is that deceased Arumugham was having Spade in his hand and that only the deceased attempted to beat A.1 and in that process, A.1 pushed him down and Arumugham fell on the வரப்பு (Common pathway) and sustained injuries which was not properly appreciated by the trial Court. It is contended that when the case of prosecution is belied by the acquittal of A.3, the same cannot be relied upon as against the Appellants / A.1 and A.2.

13. Countering the arguments, Mr.V.Jayaprakash Narayanan, learned Government Advocate (Crl.Side) has submitted that the injury

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caused to the Stomach of Arumugham is well proved by the evidence of P.W.12 – Dr.Vallinayagam. It is further submitted that the evidence of P.W.1 is amply strengthened by the oral evidence and Medical Evidence. It is submitted that the attack on the deceased by A.1 and A.2 is well proved and that the trial Court has rightly convicted the Appellants / A.1 and A.2 and the verdict of conviction warrants no interference.

14. In consideration of the submissions by both sides, impugned Judgment and other materials on record, the point that arises for consideration in this appeal is:– Whether the conviction of Appellants / A.1 and A.2 under S.325 r/w 34 I.P.C. suffers from erroneous approach warranting interference ?

15. Admittedly, there had been dispute between the brothers on the pathway. From Ex.P.12 – Rough Plan and from the evidence on record, it is seen that A.1's land and his house are on the Eastern Side; house of deceased Arumugham and his field are on the Western Side. The dispute relates to North–South *பொழி* shows as *பொது நடைபாதை*, which is said to be a pathway for the enjoyment of both the brothers, regarding which there had been enmity between the brothers and they had been inimical towards each other for a long period. That the brothers had been inimical with ill–feeling towards each other probablises the prosecution case.

16. On 06.08.1995 – 7.00 p.m., A.1 was sowing Cotton Seeds in his field. Deceased Arumugham questioned A.1 that the sowing was in the *பொழி* and that is why the first accused was sowing the Cotton seeds just nearing the *பொழி*. Angered over such questioning, A.1 and A.2 pushed Arumugham down and beat him on his Cheek. According to P.W.1 – Kannupillai, A.3 sat on Arumugham and stuffed mud into the mouth of Arumugham. But according to P.W.2 – Govindaraj, A.2 sat on the deceased and put mud inside the mouth. Barring that contradiction, P.Ws.1 and 2 have clearly spoken about the occurrence on 06.08.1995 at 7.00 p.m. and the attack on Arumugham by A.1 and A.2. At the time of occurrence, P.W.2, resident of the same Village – Avadathoor Village, who had gone to the scene of occurrence for attending the call of nature, seeing the lights on in the Pump set of Arumugham, went there and had witnessed the occurrence.

17. The learned Sessions Judge has accepted the evidence of P.Ws.1 and 2 on the overt acts of A.1 and A.2; but acquitted A.3. As noted earlier, in her Chief–examination, P.W.1 – Kannupillai has stated that A.1 had beaten the deceased on his Cheek and thereafter A.1 and A.2 pulled him down; A.3 sat on the Chest of the deceased and put sand into his mouth; A.3 caught hold of the deceased and A.1 and A.2 have beaten him all over the body. Per contra, P.W.2 – Govindaraj in his evidence has stated that A.1 had sat on the body of the deceased stuffing his mouth with sand; A.2 caught hold of Scrotum of the deceased and pulled it. According to P.W.2, A.3 was standing by the side of the deceased. Pointing out that there is no consistent version regarding the stuffing of mud into the mouth of the deceased, learned counsel for the Appellant / A.1 and A.2 assailed the credibility of P.Ws.1 and 2 and contended that the trial

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Court erred in believing their version. No doubt there is such contradiction in the evidence of P.Ws.1 and 2 and only giving benefit of that contradiction to A.3, A.3 was acquitted. Though P.W.1 has attributed the overt act of " Sitting on the Chest and Stuffing with the mud " to A.3, P.W.1 has also spoken about the overt acts A.1 and A.2 that they beat Arumugham all over the body. In her evidence, P.W.1 has clearly stated " ... உடனே முதல் எதிரி என் கணவரின் கன்னத்தில் ஓங்கி அடித்தார். 2ம் எதிரியும் என் கணவரின் கன்னத்தின் மேல் அடித்து விட்டு இ ருவரும் இழுத்துக் கீழே தள்ளினார்கள். ...". P.W.2 in his evidence has stated that A.2 had squeezed the testicles of Arumugham. Though P.W.1 has not stated about the squeezing of testicles by A.2, that does not in any way undermine the core of her evidence. Notwithstanding the contradiction, evidence of P.Ws.1 and 2 brings home the attack on the deceased by A.1 and A.2.

18. That Arumugham developed complications in the Stomach is proved by Medical Evidence. P.W.9 – Dr.Krishnaraj of Jalakandapuram Government Hospital examined him on 07.08.1995 – 3.15 p.m. and has noted:– Abrasion on the middle and lateral aspect of right thigh; Pain in the Abdomen and Scrotum found to be normal. On the alleged complaints of pain in the Abdomen and complaint on scrotum due to squeezing of testicles, Arumugham was referred to Government Hospital for better management and treatment.

19. In Government Hospital, Salem, P.W.17 – Dr.Natesan has examined Arumugham on 07.08.1995 – 7.10 p.m. On his examination, Arumugham was found to have developed Peritonitis; he was also found to have developed infection in the intestine. P.W.17 opined that Arumugham might have developed Peritonitis due to Kick on his Abdomen. Condition of Arumugham was serious and he succumbed to injuries on 08.08.1995 – 6.45 p.m. Opinion evidence of P.W.17 is strengthened by the Case Sheet and the another opinion evidence of P.W.12 – Dr.Vallinayagam. Opinion of P.W.12 that due to Kick on the Abdomen, Arumugham would have developed Peritonitis, which has caused the death also strengthens the prosecution case.

20. That death of Arumugham was due to multiple injuries is well proved by yet another aspect. P.W.12 – Dr.Vallinayagam has conducted Autopsy on the body of deceased Arumugham. During Autopsy, he has noted:–

(i) Contusion in front of Abdomen on the lower aspect;

(ii) Sutured Wound on the right lumbar region and left lumbar region;

(iii) Peritoneum Shinyness lost. Muddy, Peritoneal cavity contains 800 cc foul smelling dirty brown fluid. A perforation present on the ileal portion on the small intestine, coils of the small intestine were adherent to each other.

P.W.12 opined that the injuries could have been caused by Kicking a person on the Abdomen. P.W.12 has stated that mud was not detected

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from the body of deceased Arumugham. Since Arumugham survived for two days, the stuffing mud might have been cleared. Hence, non-detection of mud from the body of deceased Arumugham does not in any way throw doubt on the prosecution case.

21. From the evidence of P.Ws.12 and 17, it is made clear that Arumugham developed complications due to the attack in the Abdomen. A.1 and A.2 by repeatedly beating the deceased on the Abdomen are proved to be responsible for causing injuries on the Stomach and Perforation in the ileal portion on the small Intestine.

22. Case of prosecution is attacked on the ground that the scene of occurrence is not proved by the prosecution. According to prosecution, the occurrence had taken place when the deceased was removing mud on 06.08.1995 – 7.00 p.m. The contention of the accused is that either in Ex.P.1 – Complaint nor in Ex.P.2 – Observation Mahazar or in Ex.P.12 – Rough Plan, there is no clear mention as to where actually the deceased was removing mud, which shows that the prosecution has deliberately suppressed the material fact of the case and thereby doubts arising on the prosecution version. In careful analysis of the evidence, this contention has no merits. In Ex.P.2 – Observation Mahazar, scene of occurrence is clearly referred as:-

" மேற்படி சம்பவ இடமானது சவுரியூர் கிராமத்திற்கு வடக்கே சுமார் 1 பர்லாங் தூரத்தில் அண்ணாமலை மகன் கோவிந்தன் என்பவருடைய பருத்தி நாற்று ஊன்றிய புழுதிக்காட்டில் இந்த சம்பவம் நடந்துள்ளது. சம்பவ இ டத்திலிருந்து சுமார் 40 அடி தென்மேற்கே இறந்துபோன ஆறுமுகத்தின் தெற்கு பார்த்த வில்லை வீடு இருக்கிறது. சம்பவ இடத்திற்கு சுமார் 15 அடி தூரம் தெற்கே எதிரி மாரியப்பன் பருத்தி ஊன்றிய புழுதிக்காடு இருக்கிறது. ..."

Though the exact place where A.1 was sowing the Cotton is not indicated in Ex.P.2 – Observation Mahazar and Ex.P.12 – Rough Plan, common pathway is shown in Ex.P.12 leading to the inference that A.1 must have sown the Cotton in his land abetting the common pathway. This Court is of the view that a joint reading of Ex.P.2 – Observation Mahazar and Ex.P.12 – Rough Plan and evidence of P.Ws.1 and 2 clearly brings home the scene of occurrence. There is no suppression on the scene of occurrence as contended by the accused.

23. As per the evidence of P.W.2 – Govindaraj, A.2 squeezed the scrotum of deceased Arumugham. In Ex.P.5 – Accident Register, P.W.9 – Dr.Krishnaraj of Jalakandapuram Government Hospital has noted that Scrotum of Arumugham was squeezed by three known persons; but has not noted any external injuries on Scrotum. Likewise, in Ex.P.14 – Case Sheet also no injuries to the Scrotum of Arumugham were noted. As discussed earlier, the deceased had developed Peritonitis and died of multiple injuries. In para (34) of the Judgment of the trial Court, the learned Sessions Judge has carefully considered the same. Only on the ground of non-corroboration by Medical Evidence for squeezing of the testicles, benefit of doubt was given to A.2 and A.2 was acquitted for the offence under S.302 I.P.C.; but convicted for causing injuries under S.325 r/w 34 I.P.C.

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24. As noted earlier, it is the case of P.W.2 – Govindaraj that A.3 was standing by the left side of Arumugham. But P.W.1 – Kannupillai has stated that A.3 sat on the Chest of Arumugham and stuffed mud into the mouth of Arumugham. Onbehalf of the accused, it is contended that P.W.1, being the wife of Arumugham wants to implicate the entire family of A.1 and rightly the trial Court acquitted A.3. Therefore it is contended that P.W.1 is not a reliable witness and that the same benefit of doubt is to be extended to A.1 and A.2 also. Acquittal of A.3 cannot be the reason for urging acquittal for A.1 and A.2 when their overt acts are well established by the evidence of P.Ws.1 and 2.

25. The other points raised by the Appellants / A.1 and A.2 have been considered by the trial Court. Pointing out that the accused had no intention or Knowledge to cause the death of Arumugham, learned Sessions Judge has convicted the Appellants / A.1 and A.2 under S.325 r/w 34 I.P.C. That conclusion is well in confirmity with the evidence. At the time of occurrence, A.1 was aged about 60 years and during appeal, he is aged about 69 years and hence, learned counsel for the Appellants / A.1 and A.2 has prayed for modification of the sentence. This submission cannot be accepted. In A.I.R. 1999 SC 2881 – Zunjarrao Bhikaji Nagarkar v. Union of Indian, the Supreme Court has held that for the offence under S.325 I.P.C., sentence of both Imprisonment and fine are imperative. Since under S.325 I.P.C. sentence of Imprisonment and fine are imperative, the sentence of Imprisonment cannot be modified relating to A.2. This appeal is bound to fail as against A.2.

26. During the occurrence in 1995, A.1 was aged 60 Years (as per the Charge); now aged about 69 years. Before the trial Court, during questioning under S.313 Crl.P.C., A.1 has stated his age as 75 Years. If that be so, by this time A.1 might have crossed 80 years. Solely considering the age of A.1, this Court is of the view that it may not be appropriate to send the first Appellant / A.1 to prison at his old age. From the records, it is seen that in the pre-trial and in the post-conviction stage, A.1 was in detention for 82 days. Under such circumstances, for the conviction under S.325 r/w 34 I.P.C., it is appropriate to modify the sentence to the period of sentence already undergone by A.1 – 82 days and also imposing fine of Rs.11,000/-; in default to undergo Three Years Rigorous Imprisonment as imposed by the trial Court. Out of the fine amount of Rs.11,000/-, Rs.10,000/- is to be paid as compensation to P.W.1 – Kannupillai (Wife of deceased Arumugham).

27. Therefore, the Judgment of the Sessions Court, Salem in S.C.No.261 of 1996 (dated 20.01.1998) convicting first Appellant / A.1 under S.325 r/w 34 I.P.C. is confirmed. The period of sentence of Rigorous Imprisonment of Three Years is modified as the period of sentence already undergone by A.1 and also a fine amount of Rs.11,000/- is imposed; in default first Appellant / A.1 to undergo Imprisonment for Three years. Time for payment of compensation is One Month from the date of Judgment. Out of the fine amount of Rs.11,000/-, Rs.10,000/- is to be paid as compensation to P.W.1 – Kannupillai (Wife of deceased Arumugham) and this appeal is partly

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allowed as against first Appellant / A.1.

28. The Judgment of the Sessions Court, Salem in S.C.No.261 of 1996 (dated: 20.01.1998) convicting the Second Appellant / A.2 under S.325 r/w 34 I.P.C. and the sentence of Imprisonment and the fine amount are confirmed and this appeal is dismissed as against A.2.

29. The Trial Court is directed to take immediate steps for securing the Second Appellant / A.2 to commit him to prison for serving the remaining period of sentence. The trial Court is also directed to comply with the above direction within three months and the compliance of the above direction may be intimated to this Court at once within the time stipulated. The trial Court is also directed to take immediate steps for collecting the fine amount from the first Appellant / A.1.

sbi

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Judl. Magistrate II,
Mettur.

2. -do- Through The Chief Judicial Magistrate,
Salem.

3. The II Additional Sessions Judge,
Salem. (directed to take immediate steps for securing the second appelalnt/A2 to commit him to prison for serving the remaining period of sentence as mentioned supra)

4. -Do- Through the Principal Sessions Judge,
Salem.

5. The Principal Sessions Judge,
Salem.

6. The Inspector of Police,
Jalakandapuram Police Station,
Salem District.

7. The Public Prosecutor for Pondicherry,
High Court, Madras.

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8.The District Collector,
Salem.

9. The Director General of Police,
Chennai-4.

10. The Section Officer,
Criminal Section,
High Court, Madras.
(to watch the report)

+ One CC to Mr.K.V.Sridharan, Advocate (SR 55120)

Judgment
in Crl.A.No.113 of 1998

DATED: 14.12.2004

TEJ (CO)
EJ

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